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CHAI WOO SIEN (SEBAGAI PEGAWAI AWAM PERSATUAN HAKKA KULAI, JOHOR)

v.

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HUE NGEE ON

HIGH COURT MALAYA, JOHOR BAHRU
KANG HWEE GEE J
[ORIGINATING SUMMONS NO: 24-1633-2003]
C 2 DECEMBER 2003

LAND LAW: *Sale of land - Administrator - Administrator refusing to complete registration and transfer of land to purchaser - Whether purchaser entitled to a vesting order - National Land Code 1965, s. 420*

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This was an application by the plaintiff, the Persatuan Hakka Kulai, Johor ('the Association'), for a vesting order under s. 420 of the National Land Code ('NLC') in respect of a piece of property in Kulai ('the said land'). The Association had purchased
E the said land from one Hue Tiam, since deceased, in 1967, *albeit* without a formal sale and purchase agreement. The Association had not effected the due transfer or registration of the said land to itself during the deceased's lifetime, but that notwithstanding, ever since the purchase, had a quiet and an unfettered possession
F of the property. Following the demise of the deceased in 1984, the defendant became the administrator and subsequently the registered owner of the said land. The facts showed that by a written undertaking dated 23 January 1994, the defendant had offered to be a trustee of the Association, and further promised
G to complete the transfer of the property to the latter. The defendant however reneged on his words, whereupon the Association filed the present application.

Held (allowing application and granting order in terms):

H **(1)** That there was a sale of the said land to the Association was clear from the very letter of acknowledgement signed by the vendor, Hue Tiam. The letter, signed before an advocate and solicitor, clearly acknowledged that Hue Tiam had received the final payment of RM900 for the sale of the said land. Proof
I of sale was also provided by the affidavits of Chai Woo Sien and the said advocate and solicitor, as well as by the fact that the original title of the property had always been in the possession of the Association. (paras 5 & 6)

(2) Having fully paid for the said land, the Association became the beneficial owner of the property, and pending a proper conveyance to it as the registered proprietor under the National Land Code, the defendant was merely holding the same as a bare trustee of the Association. (para 7)

(3) The promise made by the defendant in the letter of 23 January 1994 was sufficient by itself to oblige the defendant to transfer the said land to the association without having to require the latter to prove the sale. In other words, the association was entitled to compel the defendant to transfer the property to it on this undertaking alone. The defendant too had failed to prove that the letter was a forgery as alleged, and so was bound to do what he promised to do therein. (paras 8 & 9)

Legislation referred to:
National Land Code, s. 420

For the plaintiff - Dr Wong Kim Fatt (Suraya Hanim with him); M/s Gulam & Wong
For the defendant - HK Tan; M/s HK Tan & Co

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Kang Hwee Gee J:

[1] This is an application for a vesting order under s. 420 of the National Land Code 1965 by the plaintiff, Mr. Chai Woo Sien, as the registered public officer of Persatuan Hakka Kulai, Johor (the Hakka Association Kulai, Johor) ("the Association"), a society registered under the Societies Act 1966. It was established for the well being of the Hakka or Khek community, particularly the Hakkas among the Malaysian Chinese residing in the Senai-Kulai area of Johor.

[2] The subject matter of this application is a piece of vacant land known as Lot 674 held under Q.T. (R) 1868, measuring 1,680 sq. ft., situated in the Township of Kulai, State of Johor, and now known as PTB 822, H.S.(D) 23377, Township of Kulai, containing the same area ("the said land").

Grounds For Making Application

[3] This is stated in the affidavit of Chai Woo Sien, the registered public officer of the plaintiff as follows:

> I, Chai Woo Sien (I/C No. 270418-71-5215) of full age, a business man and Chairman of Kee Fatt Industries Sdn Bhd and Kee Fatt Motors Engineering Sdn Bhd residing at No. J1A, Lorong 4, Kampong Baru, 81000 Kulai, Johor, do hereby solemnly and truly affirm and state as follows:
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> 1. I have personal knowledge of the matters herein, save otherwise stated. I have full excess to the records of the Plaintiff.
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> 2. I am the Public Officer of the Plaintiff. I annex hereto a copy of the letter dated 1-4-2002 from the Director of the Department of Registration of Societies, Johor, and the Certificate certifying my registration as the Public Officer, marked as Exhibit CWS 1. I am duly authorized to make this affidavit on behalf of the Plaintiff. I am also the President of the Plaintiff. The Plaintiff was registered in or about 1963 as a society for the welfare of the Hakka or Khek community among the Malaysian Chinese, particularly the Hakkas residing in the Senai Kulai area of Johor.
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> 3. The Plaintiff had purchased in or about 1967 from one Mr. Hue Tiam ("the deceased"), also known as Hae Tiang, the proprietor of the piece of vacant land then known as Lot 674, QT(R) 1868, and now known as PTB 822, HS(D) 23377, Bandar Kulai, Daerah Johor Bahru, measuring 1,680 sq. feet ("the said land") at the total price of RM9,800.00.
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> 4. The Plaintiff had paid the balance of final payment of RM900.00 to the deceased on 7-12-1974, as evidenced by a written Acknowledgement in writing signed by the deceased and witnessed by Mr. (now Dato') Chin Hon Ngian, advocate & solicitor, I annex hereto a copy of the said Acknowledgement marked as Exhibit CWS2.
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> 5. The deceased and Dato' Chin Hon Ngian, a former Malaysian Minister of Health and a legal adviser of the Plaintiff, were known to me personally for many years, and I am familiar with their signatures. The deceased died in or about 1984 without completing the transfer of the said land to the Plaintiff. His son the Defendant applied for and became a life member of the Plaintiff in 1995.

6. The Plaintiff with its own funds raised through donations of its members and members of the public had built on the said Land with the knowledge and consent of the deceased a three storey shophouse known as No. 144, Jalan Raya, 81000 Kulai, Johor, and had paid solely its construction and incidental costs. The Plaintiff occupies the 2nd Floor of the shophouse. The other two floors are rented out by the Plaintiff to tenants for income. The shophouse was completed in 1983 before the death of the deceased. Its construction works began in 1982 and I was then the President of the Plaintiff and was personally present at the ground breaking ceremony where Dato' Chin Hon Ngian and Mr. Pang Chee (the Chairman of our shophouse building subcommittee) were also present. A photograph of the shophouse (which appears on the front cover of a commemorative magazine of the Plaintiff on the occasion of the completion of the shophouse) is annexed hereto and marked as Exhibit CWS3.

7. After the death of the deceased, the Defendant on 23-1-1994 by letter addressed to the Plaintiff agreed to perfect the transfer of the said land to the Plaintiff upon the transmission of same from his later father (the deceased) to him. A copy of the said letter dated 23-1-1994 is annexed hereto and marked as Exhibit CWS 4. The Defendant knew that he or the estate of the deceased has no equitable or beneficial interest in the said land.

8. For the transmission purpose, the Defendant requested from the Plaintiff the issue document of title, ie, HS(D) 23377, and he authorized me to collect the said title by his letter dated 8-10-1994 addressed to the Ketua Pengarah when the title was registered in his name. A copy of the said letter of 8-10-1994 is annexed hereto and marked as Exhibit CWS5.

9. The said land was on 14-1-1995 registered in the name of Defendant. I annex hereto a copy of the issue document of title HS(D) 23377, PTB 822, District of Johor promise given in his letter of 23-1-1994 (Exhibit CWS4) to cause the said land to be registered in the name of the Plaintiff.

10. Thereafter, the said issue document of title HS(D) 23377 was in the possession of the Plaintiff's previous solicitors M/s YF Chun, Fam & Yee of 36-A, Jalan Abiad, Taman Tebrau Jaya, 80400 Johor Bahru, who forwarded same to my present solicitors M/s Gulam & Wong.

11. The Plaintiff had paid to the deceased the full purchase price of the said land. I am advised and verily believe that the Defendant has no equitable or beneficial interest whatsoever in the

said land, and that he is holding the same as a trustee or bare trustee on trust for the Plaintiff which is the equitable or beneficial owner. In his letter of 23-1-1994 (Exhibit CWS 4) the Defendant had in fact offered himself to be a trustee of the Plaintiff. At all material times, the Plaintiff is in sole possession or control of the said land since 1974 after the full payment of the purchase price, and the shophouse built thereon by the Plaintiff with its own funds. The Plaintiff has been receiving rental from the shophouse without interference from anyone. At all material times, the quit rent and assessment of the said land were paid by the Plaintiff, including those in 2003. Copies of the quit rent receipt for 2003 and the assessment receipt for 2003 (1st half) are annexed hereto and marked collectively as Exhibit CWS7.

12. The Defendant has to date not perfected the title of the Plaintiff in the said land. To protect the interest of the Plaintiff, it has on the advise of its present solicitors entered a private caveat on 4-7-2002. A copy of the caveat application and the registration particulars is annexed hereto and marked collectively as Exhibit CWS8.

13. On 12-3-2003, the Plaintiff's present solicitors M/s Gulam & Wong gave notice to the Defendant's solicitors M/s H. K. Tan & Co., who have not given any response to date. A copy of the said notice is annexed hereto and marked as Exhibit CWS9.

14. I humbly pray for an order in terms of the application herein.

Grounds On Which This Application Is Opposed

[4] The application is opposed by the defendant, Hue Ngee On (the son and administrator and beneficiary of the estate of the vendor, Hue Tiam) in his affidavits on grounds which may be summarized as follows:

(1) There was no sale of the property by the father, Hue Tiam.

(2) In the alternative, even if there was a sale, the sale was invalid as was uncertainty in the subject matter of the sale, ie, the land in question.

(3) The purchase price had not been paid fully on time and the plaintiff failed to prove the payments had been made by the production of proper receipts or to show by their audited accounts that payments had been made for the purchase of the land.

(4) The letter of undertaking of 23 January 1994 given by him is a forgery and in any case even if it was not he had no capacity to give the undertaking.

(5) The plaintiff had no equity in the land as claimed and any equity that it claimed had been more than satisfied by having earned rental of RM445,589 between 1983 and 2001.

(6) At most the plaintiff was a licence or tenant at will having remained on the defendant's land rent free and earning a profit from the land from the 1st and 2nd floor rentals since 1983.

Finding

[5] That there was a sale of the property to the plaintiff association is clear from the very letter of acknowledgement signed by the vendor, Hue Tiam himself. The letter of acknowledgement was signed before an advocate and solicitor, Chin Hon Ngian, and read as follows:

Acknowledgement

I, HUE TIAM (NRIC NO. 2306755) of No. C-4, New Village, Kulai, Johore hereby acknowledge final payment of Dollars Nine Hundred ($900.00) from KHET ASSOCIATION KULAI, the sale of my land held under Q.T.(R) 1868 for lot 674 to the said Association.

I have handed the title deed to the Association on this day.

Dated the 7th day of December, 1974.

Sgd.

...
Hue Tiam

Sgd.

...

Chin Hon Ngian
Advocate & Solicitor
Singapore and
West Malaysia.

The letter clearly acknowledged that the said Hu Tiam had received the final payment of $900 for the sale of his land Q.T.(R)1868 Lot 674 to the Khet Association, Kulai. The fact that the land Q.T.(R) 1868 Lot 674 was subsequently given a new title Q.T.(R) 23377 Lot PTB 822 by the land office is also clear.

[6] Although the parties did not sign a formal sale and purchase agreement, the sale of the property had been proved by:

(a) The affidavit of the plaintiff, Chai Woo Sien (the public officer of the association) dated 11 July 2003, deposing to the fact that the vendor, Hue Tiam sold the land for RM9,800 in 1967 to the association,

(b) The affidavit of Chin Hon Ngian dated 18 August 2003, the advocate and solicitor who was himself a member of the association, deposing to the fact that he had witnessed the receipt of a cheque No. 004753 dated 28 January 1968 for the sum of RM4,000 being part payment of the purchase price of the property.

(c) The affidavit of one, Tan Keng Boon dated 18 August 2003 deposing to the fact that he had personally witnessed the receipt of the cheque No. 180502 by Hue Tiam for the sum of RM500 being another part payment for the purchase of the property.

(d) The fact that the original title of the property was in the possession of the plaintiff. It was handed over to the defendant for the purpose of transmission into the name of the defendant as the administrator of the estate of Hue Tiam. The title itself (after being given a new lot number and transmitted to the defendant as the administrator) was subsequently collected back from the land office by the authority of the defendant himself.

(e) The possession of the title deed by the association is consistent with the fact that it had purchased the property and inconsistent with the defendant's claim (*albeit* without proof) that the association was merely a licencee or a tenant at will of Hue Tiam as alleged by the defendant.

[7] Having fully paid for the property the plaintiff becomes the beneficial owner of the property and pending a proper conveyance under the National Land Code to the association as the registered proprietor, the defendant is merely holding that property as a bare trustee of the association.

[8] The promise made in the letter of 23 January 1994 signed by the defendant agreeing to "perfect the transfer of the property" to the association "upon the transmission of the same from my father to me" and declaring that he "shall have no further claim against the association" constitutes a separate undertaking as the administrator of the estate of his father, Hue Tiam, to transfer the property to the association. This undertaking can stand alone to oblige the defendant to transfer the property to the association without having to require the plaintiff to prove the sale.

[9] The defendant had failed to prove that the letter signed by him was a forgery as alleged. He is therefore bound to do what he promised to do in the said letter. The plaintiff is entitled to compel the defendant to transfer the property to the association on this undertaking alone.

[10] There could be no question of the plaintiff having failed to pay on time (as alleged by the defendant) as no time limit was imposed. The facts clearly support the plaintiff's contention that payment was on staggered basis.

[11] There shall accordingly be an order in terms of the application. As the plaintiff has graciously agreed to waive costs, there shall be no order as to costs.